



HIGH COURT OF KIRIBATI

Criminal Case No 16/2017

THE REPUBLIC

v

TAUTEBWA TOOM

Teanneki Nemta for the Republic
Teetua Tewera for the accused

Date of sentencing: 18 March 2019

SENTENCE

- [1] After a trial on a charge of causing grievous harm with intent to maim, disfigure or disable, Tautebwa Toom was convicted of the lesser offence of causing grievous harm *simpliciter*. The facts of the case are set out in my judgment, which was delivered on 11 March 2019.
- [2] The prisoner is now 28 years of age; he would have been 25 or 26 at the time of the offence. While he previously worked as a security guard, he currently leads a subsistence lifestyle. He and his wife have 3 children, aged from 1 to 7 years. He has no previous convictions.
- [3] The prisoner's offending was serious. The complainant has been permanently disfigured, and he is clearly self-conscious about the damage to his ear, which he hides with his long hair. The prisoner attributes his actions to his intoxication on the night in question. This in no way excuses his conduct, but may go some way to explaining why he attacked someone he regards as a brother.
- [4] In determining the appropriate sentence for the prisoner, I am mindful of the approach to sentencing recommended by the Court of Appeal.¹ The maximum penalty for causing grievous harm is 7 years' imprisonment.
- [5] In the case of *Republic v Teekua Kamauti*,² I reviewed a number of previous sentences imposed for the offence of causing grievous harm. To those I would add the case of *Republic v Ebenri Tenamorua*,³ where the prisoner pleaded guilty

¹ *Kaere Tekaei v Republic* [2016] KICA 11, at [10].

² High Court Criminal Case 36/2017, at [15] to [17].

³ [1999] KHC 2.

after attacking his wife and biting off a small part of her right ear. The attack was provoked by the wife's admission of adultery. The prisoner was sentenced to 6 months' imprisonment, suspended for 2 years.

- [6] In Teekua's case I took the starting point to be between 18 months and 2 years. That case involved the use of a knife, which will ordinarily lead to a higher starting point than in a case where no weapon is used. I consider that an appropriate starting point for this case is a sentence of imprisonment for 15 months.
- [7] I consider the fact that the prisoner was the aggressor in the fight with Sai to be an aggravating feature of this case, for which I increase the prisoner's sentence by 3 months.
- [8] I turn then to the relevant mitigating features. The accused went to trial on the more serious charge, but I am informed that, shortly before the trial commenced, counsel for the prisoner advised counsel for the prosecution that his client was willing to plead guilty to the charge of which he was ultimately convicted. The offer was rejected. While not the same as an early plea, I will treat the prisoner as if he had pleaded guilty on the day the trial was to commence. I am also satisfied that the prisoner is genuinely remorseful for his actions. For these matters, and for the prisoner's lack of previous convictions, I deduct 4 months.
- [9] The prisoner has spent 3 days in custody awaiting sentence.
- [10] It has taken almost 2½ years to prosecute this case. While the prisoner has not had to wait as long as some others for his case to come on, such a delay is still unacceptable. For the reasons discussed by the Court of Appeal in *Li Jian Pei*, the prisoner is entitled to a modest reduction in sentence to compensate him for the breach of his constitutional right to be afforded a fair hearing within a reasonable time.⁴ I will reduce his sentence by a further 2 months.
- [11] Taking all of these matters into account, I am of the view that an appropriate sentence in this case is one of imprisonment for a period of 1 year.
- [12] As such a sentence falls within the scope of section 44 of the *Penal Code*, I turn to consider whether the prisoner's personal circumstances warrant suspension of his sentence. Counsel for the prisoner submits that his client's family will suffer hardship if the prisoner is sentenced to an immediate term of imprisonment. As in almost all cases where someone is sent to prison, a custodial sentence will be difficult for the prisoner's family. I see no reason to suspend this sentence.
- [13] The prisoner is to be imprisoned for a period of 1 year from today.


Lambourne J
 Judge of the High Court



⁴ *Attorney-General v Li Jian Pei & Taaiteti Areke* [2015] KICA 5.